

EXHIBIT 14
FILED UNDER SEAL

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) 1:23-cv-00108-LMB-JFA
et al.,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF

KENDALL OLIPHANT

August 9, 2023

9:32 a.m.

Reported by: Bonnie L. Russo
Job No. 6031956

Veritext Legal Solutions

800-567-8658

FILED PURSUANT TO COURT ORDER DOC. 354

973-410-4098

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<p style="text-align: right;">Page 2</p> <p>1 Videotaped Deposition of Kendall Oliphant</p> <p>2 held at:</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Paul, Weiss, Rifkind, Wharton & Garrison, LLP</p> <p>7 2001 K Street, N.W.</p> <p>8 Washington, D.C.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Pursuant to Notice, when were present on behalf</p> <p>19 of the respective parties:</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (CONTINUED):</p> <p>2</p> <p>3</p> <p>4 Also Present:</p> <p>5 Glen Fortner, Videographer</p> <p>6 Michael A. Cannon, Chief Counsel for Economic</p> <p>7 Affairs, United States Department of Commerce</p> <p>8</p> <p>9 Also Present Via Remotely:</p> <p>10 Julia Wood, DOJ</p> <p>11 Jeannie S. Rhea, Paul, Weiss, Rifkind, Wharton</p> <p>12 & Garrison, LLP</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiffs:</p> <p>4 RACHEL ZWOLINSKI, ESQUIRE</p> <p>5 VICTOR LIU, ESQUIRE</p> <p>6 ALVIN CHU, ESQUIRE</p> <p>7 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>8 1331 Pennsylvania Avenue, N.W.</p> <p>9 Washington, D.C. 20005</p> <p>10 rachel.zwolinski@usdoj.gov</p> <p>11</p> <p>12 On behalf of the Defendant:</p> <p>13 MARTHA L. GOODMAN, ESQUIRE</p> <p>14 ANNELEISE CORRIVEAU, ESQUIRE</p> <p>15 PAUL, WEISS, RIFKIND, WHARTON &</p> <p>16 GARRISON, LLP</p> <p>17 2001 K Street, N.W.</p> <p>18 Washington, D.C. 20006</p> <p>19 mgoodman@paulweiss.com</p> <p>20 acorriveau@paulweiss.com</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X</p> <p>2 EXAMINATION OF KENDALL OLIPHANT PAGE</p> <p>3 BY MS. GOODMAN 12</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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6	Exhibit 17 Order 15 - Media Strategy	154	6	Exhibit 24 Department of Commerce	268
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2	Exhibit 19 Campaign Optimization	182	2	Exhibit 28 Order 15: 2020 Census	288
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22			22	(Exhibits bound separately.)	

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<p>1 about agreeing to the terms of service for</p> <p>2 Google ads?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Mr. Benson -- well, first of</p> <p>5 all, Mr. Benson, he is at Reingold. What is</p> <p>6 Reingold?</p> <p>7 A. Reingold is a small business that</p> <p>8 was a subcontractor on the integrated</p> <p>9 communications contract, specifically focused</p> <p>10 on the purchase of digital advertising.</p> <p>11 Q. And when you say "they are a</p> <p>12 subcontractor," who are they a subcontractor</p> <p>13 of?</p> <p>14 A. The prime contractor of record was</p> <p>15 VMLY&R.</p> <p>16 Q. So is it accurate to say there was</p> <p>17 no contract directly between the census bureau</p> <p>18 and Reingold?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: Yes, that is correct.</p> <p>22 BY MS. GOODMAN:</p>	<p>1 Q. Okay. And does anything in the</p> <p>2 media authorization form that is attached to</p> <p>3 that e-mail say anything about Google?</p> <p>4 MS. ZWOLINSKI: Objection. Form.</p> <p>5 THE WITNESS: Media authorization</p> <p>6 forms only provide an authorization to expend</p> <p>7 money in a specific media category, not to a</p> <p>8 specific vendor.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And so is it accurate that this</p> <p>11 media authorization form does not say anything</p> <p>12 about Google?</p> <p>13 A. Correct.</p> <p>14 Q. And is it accurate that this media</p> <p>15 authorization form does not say anything about</p> <p>16 what vendor to use for the purchase of, in this</p> <p>17 instance, digital display, programmatic,</p> <p>18 digital paid social, and digital add-opts, ad</p> <p>19 serving?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 THE WITNESS: That is correct.</p> <p>22 BY MS. GOODMAN:</p>
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<p>1 Q. Mr. Ryan -- Mr. Benson of Reingold</p> <p>2 writes back: "Kendall, please see attached</p> <p>3 media authorization form example per our</p> <p>4 conversation just now."</p> <p>5 Do you recall a conversation with</p> <p>6 Mr. Benson with respect to this request to him?</p> <p>7 A. Yes.</p> <p>8 Q. And what did you and Mr. Benson</p> <p>9 discuss?</p> <p>10 A. Exactly the media authorization</p> <p>11 form.</p> <p>12 Q. And -- and so what -- well, what did</p> <p>13 Mr. Benson say in response to your questions?</p> <p>14 A. He said that every media</p> <p>15 authorization form had that -- that disclaimer</p> <p>16 in there -- or I'm not sure if it is called a</p> <p>17 disclaimer but had that note in there</p> <p>18 authorizing the particular agency to purchase</p> <p>19 advertising.</p> <p>20 As a subcontractor to VMLY&R, they</p> <p>21 had the authority to purchase advertising on</p> <p>22 behalf of the census bureau.</p>	<p>1 Q. Why doesn't it say anything about</p> <p>2 what vendor he used for the purchase of these</p> <p>3 categories of advertising?</p> <p>4 MS. ZWOLINSKI: Objection. Form.</p> <p>5 Foundation.</p> <p>6 THE WITNESS: If we are so</p> <p>7 restrictive to direct funding to a specific</p> <p>8 vendor -- well, let me change that.</p> <p>9 We don't direct payment to a</p> <p>10 specific vendor. We ask the agencies to buy</p> <p>11 media in that -- with that -- buy that type of</p> <p>12 media, and we trust that our agencies who</p> <p>13 negotiate the best price with whichever vendors</p> <p>14 will give us or meet the requirements that we</p> <p>15 need for that particular type of media to reach</p> <p>16 the audience in the way we need to reach them.</p> <p>17 That does not mean it has to be</p> <p>18 Google. It could have been somebody else. So</p> <p>19 we do not tie their hands by specifically</p> <p>20 stating Google.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. In your conversation with Mr. Benson</p>

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<p>1 with respect to this document we're looking at,</p> <p>2 Exhibit 13, did you say anything about the</p> <p>3 request from Department of Commerce about the</p> <p>4 use of Google ads?</p> <p>5 MS. ZWOLINSKI: Objection. Form.</p> <p>6 THE WITNESS: The only thing I said</p> <p>7 was in here. He did not ask any further</p> <p>8 questions. I did not offer any additional</p> <p>9 information, but I like to clarify why I am</p> <p>10 asking a question.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Okay. Do you know why the</p> <p>13 Department of Commerce was asking about the use</p> <p>14 of Google ads and digital advertising in the</p> <p>15 2020 census on January 17, 2023?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: I -- this would have</p> <p>19 had to have come out of a conversation I had</p> <p>20 with Mike and --</p> <p>21 MS. ZWOLINSKI: Objection.</p> <p>22 Objection. Privilege.</p>	<p>1 the ultimate -- did we agree to the terms and</p> <p>2 my understanding was that we did on the -- on</p> <p>3 the media authorization form or MAF.</p> <p>4 I -- yes, that was my understanding</p> <p>5 of the conversation.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Okay. Do you know why that question</p> <p>8 was being asked in and around January 17, 2023?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 Privilege.</p> <p>11 MS. GOODMAN: It's not calling for</p> <p>12 privileged communications. I'm --</p> <p>13 MS. ZWOLINSKI: It depends on which</p> <p>14 -- where is her basis for knowing what question</p> <p>15 was being asked, right? You are asking for the</p> <p>16 reason the question is being asked, and I don't</p> <p>17 -- that could be calling for privileged</p> <p>18 information.</p> <p>19 MS. GOODMAN: The way that I am</p> <p>20 asking the question is not calling for a</p> <p>21 privileged communication between Ms. Oliphant</p> <p>22 and any counsel at the Department of Commerce.</p>
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<p>1 The conversation -- so the</p> <p>2 conversation, this came out of a conversation</p> <p>3 between you and Mike, your attorney?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MS. ZWOLINSKI: Yeah. Objection.</p> <p>6 Privilege.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Without answering with respect to --</p> <p>9 I am not asking for my particular</p> <p>10 communications between you and Mr. Cannon.</p> <p>11 My question is as what this e-mail</p> <p>12 says: "DOC is asking whether we use Google ads</p> <p>13 in our digital advertising for 2020."</p> <p>14 What is your understanding of why</p> <p>15 DOC was asking that question?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: DOC asked a lot of</p> <p>19 questions. It could have been anything. I</p> <p>20 think it was -- my understanding is, it was</p> <p>21 just what was said. Did we actually</p> <p>22 understand, were we given -- did they give us</p>	<p>1 BY MS. GOODMAN:</p> <p>2 Q. My question to you is your personal</p> <p>3 understanding. Do you have a personal</p> <p>4 understanding one way or another about why this</p> <p>5 question was posed to you in and around January</p> <p>6 17, 2023?</p> <p>7 A. My understanding it was posed to me</p> <p>8 because of my involvement with the media buying</p> <p>9 for the 2020 census.</p> <p>10 Q. And do you know why Department of</p> <p>11 Commerce was asking about Google ads and</p> <p>12 digital advertising for the 2020 -- 2020 census</p> <p>13 in January of 2023?</p> <p>14 MS. ZWOLINSKI: Objection.</p> <p>15 Privilege. If --</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. If you can answer that question</p> <p>18 without relying on privileged communications --</p> <p>19 on communications between yourself and lawyers</p> <p>20 for the Department of Commerce, that's what I</p> <p>21 am asking for in your answer.</p> <p>22 A. I can't answer.</p>

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<p>1 Q. Is that because you only have an</p> <p>2 understanding based on privileged</p> <p>3 communications?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And with whom are those --</p> <p>6 did those privileged communications take place?</p> <p>7 A. Commerce lawyer, Mike Cannon.</p> <p>8 Q. Any lawyers from the Department of</p> <p>9 Justice?</p> <p>10 A. No.</p> <p>11 Q. Okay. Do you know what date this</p> <p>12 lawsuit was filed?</p> <p>13 A. Honestly, no.</p> <p>14 Q. It was filed on January 24, 2023.</p> <p>15 A. Okay.</p> <p>16 Q. I will state that for the record.</p> <p>17 So with that sort of time period in</p> <p>18 mind, do you recall any conversations prior to</p> <p>19 January 24, 2023, with any lawyers for the</p> <p>20 Department of Justice with respect to using</p> <p>21 Google in the census's digital advertising paid</p> <p>22 media for the 2020 census?</p>	<p>1 -- strike that.</p> <p>2 What is your best recollection of</p> <p>3 when, if at all, you spoke with lawyers from</p> <p>4 the Department of Justice about the census</p> <p>5 bureau's use of Google in the 2020 census?</p> <p>6 MS. ZWOLINSKI: Objection. Form.</p> <p>7 THE WITNESS: It would have had to</p> <p>8 have been somewhere in the time frame of when</p> <p>9 the -- when the suit was filed.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Do you recall any conversations</p> <p>12 prior to January of 2023?</p> <p>13 MS. ZWOLINSKI: Objection. Form.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. I will represent to you that the</p> <p>17 United States Department of Justice has been</p> <p>18 investigating Google's advertising practices</p> <p>19 for the last three years. So over that --</p> <p>20 meaning the '21 -- 2021, 2022, 2023.</p> <p>21 In the years 2021 or 2022, do you</p> <p>22 recall any conversation with any lawyer from</p>
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<p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 THE WITNESS: I don't recall.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Is it typical in your day-to-day</p> <p>5 work to speak with lawyers from the Department</p> <p>6 of Justice?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: I do not speak to</p> <p>9 anybody from Justice that -- I don't -- no, it</p> <p>10 is not.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. And so if you did speak with lawyers</p> <p>13 from the Department of Justice, is that</p> <p>14 something you might remember because it is not</p> <p>15 usual in the course of your work?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 THE WITNESS: I may remember</p> <p>18 speaking to them. I may not necessarily</p> <p>19 remember timing.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. And do you have any</p> <p>22 recollection of a timing -- the timing during</p>	<p>1 the Department of Justice about census bureau's</p> <p>2 use of Google for the 2020 census?</p> <p>3 A. No.</p> <p>4 MS. ZWOLINSKI: Objection. Form.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. So as of January 17, 2023, that we</p> <p>7 -- that you sent this e-mail to Mr. Benson, at</p> <p>8 this time, did you anticipate participating in</p> <p>9 litigation on behalf of the United States</p> <p>10 against Google?</p> <p>11 MS. ZWOLINSKI: Objection. Form.</p> <p>12 THE WITNESS: I did not.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. At this time in January of 2023, did</p> <p>15 you have any knowledge or awareness of any</p> <p>16 investigation by the Department of Justice of</p> <p>17 -- of Google with respect to its advertising</p> <p>18 businesses?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 THE WITNESS: Can you be more</p> <p>21 specific?</p> <p>22 BY MS. GOODMAN:</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. Have you ever -- strike that.</p> <p>2 To what extent, if any, were you</p> <p>3 aware in January of 2023, that the Department</p> <p>4 of Justice Antitrust Division was investigating</p> <p>5 Google?</p> <p>6 MS. ZWOLINSKI: Objection. Form.</p> <p>7 THE WITNESS: I guess when they</p> <p>8 actually filed the suit.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And so prior to January 24, 2023,</p> <p>11 when the Department of Justice filed the</p> <p>12 lawsuit, you were not aware of any</p> <p>13 investigation that the antitrust division was</p> <p>14 doing of Google, correct?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: I honestly -- I don't</p> <p>17 recall.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. You don't recall any awareness of an</p> <p>20 investigation; is that right?</p> <p>21 MS. ZWOLINSKI: Objection. Form.</p> <p>22 THE WITNESS: I didn't recall when</p>	<p style="text-align: right;">Page 64</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. So for the record, your testimony is</p> <p>4 that you never sought the legal advice of the</p> <p>5 antitrust division with respect to</p> <p>6 anticompetitive on the part of --</p> <p>7 anticompetitive conduct on the part of Google;</p> <p>8 is that correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Have you received a litigation hold</p> <p>11 in this case?</p> <p>12 A. Yes.</p> <p>13 Q. And approximately when did you</p> <p>14 receive that hold?</p> <p>15 A. For context. We have a lot going</p> <p>16 on. I can't honestly tell you when I first</p> <p>17 started hearing about it or when I first</p> <p>18 started -- when I got the litigation hold.</p> <p>19 If I go through my e-mail, I can</p> <p>20 tell you, but off the top of my head, we have</p> <p>21 way too many deadlines that we are trying to</p> <p>22 meet for this to be -- until it became a big</p>
<p style="text-align: right;">Page 63</p> <p>1 the lawsuit was filed, so the timing, I can't</p> <p>2 -- no. I don't recall. I don't -- I'm not</p> <p>3 aware.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Prior to -- strike that.</p> <p>6 In the course of your work as the</p> <p>7 COR for Order 15, did you ever form a view that</p> <p>8 Google's -- Google was engaging in</p> <p>9 anticompetitive conduct?</p> <p>10 MS. ZWOLINSKI: Objection. Form.</p> <p>11 THE WITNESS: No, I did not.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And did you ever seek the legal</p> <p>14 advice of the antitrust division with respect</p> <p>15 to any anticompetitive conduct on the part of</p> <p>16 Google?</p> <p>17 MS. ZWOLINSKI: Objection. Form and</p> <p>18 privileged.</p> <p>19 MS. GOODMAN: It's a yes or no</p> <p>20 question. It's not privileged. I am asking</p> <p>21 whether she sought legal advice.</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p>	<p style="text-align: right;">Page 65</p> <p>1 thing, a real thing, for it -- it just -- it</p> <p>2 just seemed like it was information seeking, so</p> <p>3 I don't know.</p> <p>4 MS. ZWOLINSKI: Counsel, we've been</p> <p>5 going over -- we've been going for over an</p> <p>6 hour. Can we take a break.</p> <p>7 MS. GOODMAN: Yeah, once I finish</p> <p>8 this line of questioning, I am happy to break.</p> <p>9 MS. ZWOLINSKI: How much time do you</p> <p>10 anticipate that line of questioning taking?</p> <p>11 MS. GOODMAN: A few more minutes.</p> <p>12 MS. ZWOLINSKI: Okay.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. You -- in your prior answer, you</p> <p>15 said that it seemed like it was just</p> <p>16 information seeking.</p> <p>17 What did you mean by that?</p> <p>18 MS. ZWOLINSKI: Objection. Form.</p> <p>19 THE WITNESS: We get asked questions</p> <p>20 all the time. It was just responding to a</p> <p>21 request.</p> <p>22 BY MS. GOODMAN:</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. When you say "it was just responding</p> <p>2 to a request," you are talking about what</p> <p>3 specifically?</p> <p>4 A. We can go back to the e-mail that</p> <p>5 you provided, Bates census ad 0000244816. I</p> <p>6 was asked a question. I followed up to make</p> <p>7 sure that my answer -- that the answer I</p> <p>8 thought was correct was actually correct. This</p> <p>9 is standard procedures.</p> <p>10 Q. And when you say "standard</p> <p>11 procedures," can you elaborate?</p> <p>12 A. If I am unsure of the answer -- we</p> <p>13 don't purchase media. So if I am unsure of the</p> <p>14 answer, I go back to the media buyers to</p> <p>15 clarify before I provide an answer to whoever</p> <p>16 is requesting that information.</p> <p>17 Q. And when you receive a request from</p> <p>18 the Department of Commerce, is that a standard</p> <p>19 occurrence as well?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 THE WITNESS: For clarity, are you</p> <p>22 asking is it -- is it a standard occurrence for</p>	<p style="text-align: right;">Page 68</p> <p>1 THE WITNESS: Until the lawsuit was</p> <p>2 filed and I was asked to participate --</p> <p>3 formally asked to participate.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And so is it fair to say you were</p> <p>6 formally asked to participate after the lawsuit</p> <p>7 was filed?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 THE WITNESS: I don't recall.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And do you recall who asked you to</p> <p>12 participate in the lawsuit?</p> <p>13 MS. ZWOLINSKI: Objection.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: Small group, but I'm</p> <p>16 not sure who.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. When you say "a small group," is</p> <p>19 there sort of a group of potential people that</p> <p>20 you are thinking of, it might have been one of</p> <p>21 them?</p> <p>22 A. No. I am really thinking about</p>
<p style="text-align: right;">Page 67</p> <p>1 me to receive requests from the Department of</p> <p>2 Commerce?</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Yes.</p> <p>5 A. Yes.</p> <p>6 Q. And is it a standard occurrence to</p> <p>7 receive -- strike that.</p> <p>8 Earlier in a prior answer, you also</p> <p>9 said that -- when I asked you when you received</p> <p>10 a litigation hold, you said that you receive</p> <p>11 multiple requests and lots of things are going</p> <p>12 on and you don't recall, but you -- do you</p> <p>13 recall that testimony?</p> <p>14 MS. ZWOLINSKI: Objection to form.</p> <p>15 THE WITNESS: That was when I was</p> <p>16 giving you context.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. And you also said "until it</p> <p>19 became a big thing, a real thing."</p> <p>20 What -- what were you referring to</p> <p>21 there?</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p>	<p style="text-align: right;">Page 69</p> <p>1 this.</p> <p>2 It would have been legal counsel</p> <p>3 through commerce, Mike Cannon.</p> <p>4 Q. And as of January 17, 2023, in</p> <p>5 Exhibit 13 that we are looking at, had you been</p> <p>6 asked to formally participate in the lawsuit by</p> <p>7 that -- around that time?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 THE WITNESS: I don't recall.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. When you say you don't recall, do</p> <p>12 you mean, I don't recall being asked prior to</p> <p>13 January 17, 2023 to participate in this</p> <p>14 lawsuit?</p> <p>15 A. Define "participation."</p> <p>16 Q. Well, how do you understand it?</p> <p>17 A. Anytime -- my understanding of</p> <p>18 participation is actually getting to the point</p> <p>19 where I am here doing a deposition. That is</p> <p>20 what I am considering participation.</p> <p>21 Q. Would you also consider</p> <p>22 participation in signing off on interrogatory</p>

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<p>1 responses?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 MS. ZWOLINSKI: Objection.</p> <p>5 THE WITNESS: Sorry.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Would you also consider</p> <p>8 participation collecting documents?</p> <p>9 A. I consider collecting documents</p> <p>10 responding to a request which is what we do all</p> <p>11 the time. That does not necessarily mean</p> <p>12 participation.</p> <p>13 Q. Do you respond -- have you responded</p> <p>14 to any requests to collect documents where the</p> <p>15 requests were made by the Department of</p> <p>16 Justice?</p> <p>17 MS. ZWOLINSKI: Objection. Form,</p> <p>18 and objection. Privilege.</p> <p>19 MS. GOODMAN: I am asking whether</p> <p>20 she had -- whether Ms. Oliphant has had to</p> <p>21 collect documents at the request of the</p> <p>22 antitrust division of the Department of</p>	<p>1 (A short recess was taken.)</p> <p>2 THE VIDEOGRAPHER: Going back on the</p> <p>3 record. The time is 11:08.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Ms. Oliphant, did you discuss the</p> <p>6 substance of your deposition with your counsel</p> <p>7 on the break?</p> <p>8 MS. ZWOLINSKI: You can say that --</p> <p>9 just one second. Sorry.</p> <p>10 MS. GOODMAN: It's again a yes or no</p> <p>11 question.</p> <p>12 MS. ZWOLINSKI: That isn't really</p> <p>13 the relevant factor. Let me -- you can answer</p> <p>14 that question but don't discuss the substance</p> <p>15 of anything that we discussed.</p> <p>16 You can answer whether or not you</p> <p>17 discussed your deposition during the break, but</p> <p>18 none of the substance.</p> <p>19 THE WITNESS: Can you be more</p> <p>20 specific in -- what do you mean. What do you</p> <p>21 mean by discussing the deposition?</p> <p>22 BY MS. GOODMAN:</p>
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<p>1 Justice. That is not -- it's a yes or no</p> <p>2 question. It does not call for privileged</p> <p>3 legal advice or any fact or opinion or work</p> <p>4 product. She can answer that question.</p> <p>5 MS. ZWOLINSKI: You can answer.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. And when approximately in time do</p> <p>9 you recall receiving any requests to collect</p> <p>10 documents from the antitrust division of the</p> <p>11 Department of Justice?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Sitting here today, do you</p> <p>14 recall any request to you to participate in</p> <p>15 this lawsuit in the way that we have described</p> <p>16 it prior to January 24, 2023?</p> <p>17 MS. ZWOLINSKI: Objection. Form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 MS. GOODMAN: Okay. We can take a</p> <p>20 break now.</p> <p>21 THE VIDEOGRAPHER: Going off the</p> <p>22 record. The time is 10:49.</p>	<p>1 Q. Did you discuss with your counsel on</p> <p>2 the break the matters to which you had</p> <p>3 testified in the previous hour sitting here in</p> <p>4 this deposition?</p> <p>5 A. No.</p> <p>6 Q. So earlier, we talked about a master</p> <p>7 contract.</p> <p>8 Do you -- what is the official name</p> <p>9 of that master contract for the 2020 census?</p> <p>10 A. It is the 2020 census integrated</p> <p>11 communications contract.</p> <p>12 Q. For shorthand, can we call that the</p> <p>13 master contract today?</p> <p>14 A. You sure can.</p> <p>15 Q. And that contract -- the master</p> <p>16 contract was issued to Young & Rubicam; is that</p> <p>17 correct?</p> <p>18 A. Yes. And you'll note that at some</p> <p>19 point, they changed their name to VMLY&R.</p> <p>20 Q. What is the best acronym to use</p> <p>21 today for --</p> <p>22 A. Prime.</p>

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<p>1 Q. Prime contractor?</p> <p>2 A. Just prime contractor. That's easy.</p> <p>3 Q. Okay. And we'll refer to Young &</p> <p>4 Rubicam which is also known as VMLY&R as the</p> <p>5 prime contractor?</p> <p>6 A. Prime or Y&R, whichever works for</p> <p>7 you.</p> <p>8 Q. Y&R?</p> <p>9 A. Yeah.</p> <p>10 Q. And various task orders were issued</p> <p>11 under the master contract, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And Order 15 which relates to paid</p> <p>14 media, that was also issued to Y&R, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And Order 8 under the master</p> <p>17 contract, which relates to recruiting of census</p> <p>18 workers, that was also issued to Y&R, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Order 15, describe for me at</p> <p>21 a high level what Order 15 covers.</p> <p>22 A. Order 15 covered the development of</p>	<p>1 already as part of their team with the</p> <p>2 understanding that each contractor had a role.</p> <p>3 You had a number of contractors that were</p> <p>4 audience-specific and they were required --</p> <p>5 their role was to create communications to</p> <p>6 reach their audience because that was their</p> <p>7 specialty, and in some cases, they also bought</p> <p>8 media.</p> <p>9 Most of the media they purchased was</p> <p>10 local and hyper local. Y&R, the agency itself,</p> <p>11 did not buy media. They brought subcontractors</p> <p>12 on to plan and purchase the media.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And that was permitted under Order</p> <p>15 15, correct?</p> <p>16 A. Yes, it was.</p> <p>17 Q. And as a result, the census bureau</p> <p>18 did not contract directly with any of the</p> <p>19 subcontractors or entities who were purchasing</p> <p>20 the media; is that correct?</p> <p>21 MS. ZWOLINSKI: Objection. Form.</p> <p>22 THE WITNESS: The census bureau</p>
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<p>1 the media strategy, plans, purchasing -- I am</p> <p>2 looking forward, strategy, plan, purchasing and</p> <p>3 evaluation. By evaluation, that is comparing</p> <p>4 planned versus actual.</p> <p>5 Q. When you say "planned versus</p> <p>6 actual," are you referring to planned media</p> <p>7 spend as compared to actual media spend?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And did Order 15 contemplate</p> <p>10 Y&R entering into subcontracting relationships?</p> <p>11 MS. ZWOLINSKI: Objection. Form.</p> <p>12 THE WITNESS: For context. When the</p> <p>13 communications contract was competed, Y&R --</p> <p>14 when they were awarded the contract, the</p> <p>15 contract -- they came with their entire team in</p> <p>16 place.</p> <p>17 The RFP for the contract</p> <p>18 specifically requested the ability to create</p> <p>19 messaging to reach numerous languages in their</p> <p>20 native tongue.</p> <p>21 The previous census -- well -- so</p> <p>22 Y&R came to the table with their contractors</p>	<p>1 contracted with Y&R and to -- to perform all</p> <p>2 the requirements under the communications</p> <p>3 contract, which included planning and</p> <p>4 purchasing media. As such, Y&R contracted --</p> <p>5 subcontracted with other agencies to assist</p> <p>6 them. They were purchasing media on behalf of</p> <p>7 the census bureau.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. And so those other agencies who were</p> <p>10 purchasing media on behalf of the census</p> <p>11 bureau, with respect to those agencies, there</p> <p>12 is no contract between the census bureau and</p> <p>13 those agencies who were purchasing media on</p> <p>14 behalf of the census bureau, correct?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: No direct contracts,</p> <p>17 yes, correct.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And so after the master contract was</p> <p>20 awarded, the communications contract, I think</p> <p>21 you also referred to it, then Order 15 was</p> <p>22 agreed to; is that correct?</p>

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<p style="text-align: right;">Page 78</p> <p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 THE WITNESS: Yes. It was awarded.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And that was also as awarded to</p> <p>5 Young & Rubicam?</p> <p>6 A. For context. The prime contract was</p> <p>7 awarded to Young & Rubicam, and thus, all</p> <p>8 orders under the prime contract are</p> <p>9 automatically awarded to Young & Rubicam.</p> <p>10 Q. And Order 15 pertains to media</p> <p>11 planning and buying, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And so by virtue of Order 15,</p> <p>14 pertaining to media planning and buying being</p> <p>15 awarded to Young & Rubicam, there was no</p> <p>16 separate order between the census bureau and</p> <p>17 any other agency on whose -- who was making</p> <p>18 paid media purchases, correct?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 THE WITNESS: Correct.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And as part of agreeing to Order 15</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. So I am going to hand you what I</p> <p>2 have marked as Exhibit 14,</p> <p>3 CENSUS-ADS-0000387420 through 387490.</p> <p>4 And take a look at it, and just --</p> <p>5 can you confirm for me that this is the</p> <p>6 technical proposal that Y&R submitted for Order</p> <p>7 15?</p> <p>8 Ms. Oliphant, you see the first page</p> <p>9 says: "Integrated communication contract,</p> <p>10 revised technical proposal, Version 2, October</p> <p>11 5, 2018"?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Okay. Any reason to doubt that this</p> <p>14 is the technical proposal submitted by Y&R?</p> <p>15 A. I have no doubt this is the</p> <p>16 technical proposal submitted from Y&R. For</p> <p>17 context, every -- multiple technical proposals</p> <p>18 were received as additional work was added. I</p> <p>19 am verifying this was for the first initial</p> <p>20 technical proposal.</p> <p>21 Q. Okay.</p> <p>22 A. That's --</p>
<p style="text-align: right;">Page 79</p> <p>1 with Y&R, they had to complete a technical</p> <p>2 proposal; is that correct?</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 THE WITNESS: That is correct.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And what does the technical proposal</p> <p>7 entail?</p> <p>8 A. The government, the census bureau in</p> <p>9 this case, defines the requirements. The</p> <p>10 requirements are shared with Y&R and they</p> <p>11 provide a proposal in response to those</p> <p>12 requirements.</p> <p>13 The census bureau or the government</p> <p>14 reviews their proposal to make sure it's in</p> <p>15 line with the requirements. If negotiations</p> <p>16 are required, they are done between the</p> <p>17 contractor, the contracting officer -- Y&R, the</p> <p>18 contracting officer and the CORs before a final</p> <p>19 proposal is accepted.</p> <p>20 (Deposition Exhibit 14 was marked</p> <p>21 for identification.)</p> <p>22 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. And sitting here today, do you</p> <p>2 recall technical proposals issued with respect</p> <p>3 to Order 15 after October 5, 2018?</p> <p>4 A. Yes. They would -- ideally, they</p> <p>5 would be considered modifications, so it would</p> <p>6 be -- if we wanted to do additional work for</p> <p>7 some reason that was in scope of the order but</p> <p>8 was in addition to what had already been</p> <p>9 planned, approved and funded, Y&R would -- we</p> <p>10 would have to provide the requirements to Y&R.</p> <p>11 They would still have to provide a</p> <p>12 technical and a price proposal. We would still</p> <p>13 go through the same process. It should be</p> <p>14 adequately or appropriately marked. I am just</p> <p>15 making sure.</p> <p>16 Q. Okay. I want to direct your</p> <p>17 attention to Page 6 of this document,</p> <p>18 Bates-labeled 25 at the end.</p> <p>19 A. Uh-huh.</p> <p>20 Q. And in the first full paragraph</p> <p>21 beginning: "Supplementing these workshops."</p> <p>22 Do you see where I am?</p>

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<p style="text-align: right;">Page 318</p> <p>1 to reach people in the next census does it</p> <p>2 matter to you to understand how effective open</p> <p>3 web display advertising was in reaching your</p> <p>4 campaign goals?</p> <p>5 MS. ZWOLINSKI: Objection. Form.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. And why is that?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 THE WITNESS: In the over -- we have</p> <p>11 to evaluate every type of media and how</p> <p>12 effective it was.</p> <p>13 Again, most people do not remember</p> <p>14 where they heard an ad. What the digital ads</p> <p>15 that the -- the clickable ads allowed you to do</p> <p>16 was to actually trace their steps. So it's a</p> <p>17 little bit easier to determine if it generated</p> <p>18 the action you wanted it to generate.</p> <p>19 You can't do that necessarily</p> <p>20 through TV or print or radio or out of home,</p> <p>21 but that does not mean they were not as</p> <p>22 effective at driving engagement.</p>	<p style="text-align: right;">Page 320</p> <p>1 understand open display, if that makes sense.</p> <p>2 In order to -- plain language is</p> <p>3 extremely important, extremely important. And</p> <p>4 to get the buy in internally and externally, we</p> <p>5 need to be able to understand what we did and</p> <p>6 be able to discuss what we did. And that</p> <p>7 discussion could be held by anybody, so it</p> <p>8 needs to be terminology that they can relate</p> <p>9 to.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And to your -- is it your testimony</p> <p>12 that open web display advertising is</p> <p>13 terminology that is not relatable?</p> <p>14 MS. ZWOLINSKI: Objection. Form.</p> <p>15 THE WITNESS: It depends on the</p> <p>16 audience. It's not that it's not relatable.</p> <p>17 It's just that you have to consider the</p> <p>18 audience.</p> <p>19 The bulk of those reviewing these</p> <p>20 have no media background. They don't</p> <p>21 understand. They understand digital. Their</p> <p>22 watches are digital. Their clocks are digital.</p>
<p style="text-align: right;">Page 319</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. And for purposes of understanding</p> <p>3 the effectiveness of digital ads, nothing in</p> <p>4 this document speaks specifically to open web</p> <p>5 display advertising; is that correct?</p> <p>6 MS. ZWOLINSKI: Objection. Form.</p> <p>7 Foundation.</p> <p>8 THE WITNESS: Not using the</p> <p>9 terminology, no.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And you don't use that terminology</p> <p>12 because it's not something you've encountered</p> <p>13 in the industry; is that right?</p> <p>14 MS. ZWOLINSKI: Objection. Form.</p> <p>15 THE WITNESS: It may -- I may have</p> <p>16 encountered it in the industry, but in order to</p> <p>17 ensure that everybody understood what we were</p> <p>18 talking about, we used plain language and tried</p> <p>19 to steer away from industry jargon, and that</p> <p>20 would be considered industry jargon because</p> <p>21 it's too broad of a category and doesn't -- we</p> <p>22 understand digital way easier than we</p>	<p style="text-align: right;">Page 321</p> <p>1 Their thermostats are digital. They don't</p> <p>2 understand open web advertising.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay. And if we turn to page ending</p> <p>5 in Bates 86, this includes a table of</p> <p>6 advertisement formats, correct?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And none of the types listed -- none</p> <p>11 of the formats listed here are specifically</p> <p>12 identified as open web display advertisements;</p> <p>13 is that correct?</p> <p>14 MS. ZWOLINSKI: Objection. Form.</p> <p>15 THE WITNESS: That is correct.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. And can you -- of the -- of the</p> <p>18 items here in Table 2, which, from your point</p> <p>19 of view, constitute open web display</p> <p>20 advertising, if any?</p> <p>21 MS. ZWOLINSKI: Objection. Form.</p> <p>22 Foundation.</p>

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<p style="text-align: right;">Page 322</p> <p>1 THE WITNESS: I don't know.</p> <p>2 MS. GOODMAN: And, Counsel, for the</p> <p>3 record, we've not found the data underlying</p> <p>4 this study in your productions, so we'd ask you</p> <p>5 to produce it or direct us to the Bates number</p> <p>6 where it's produced.</p> <p>7 Okay. Handing you Exhibit 31,</p> <p>8 CENSUS-ADS-245053 through 55.</p> <p>9 (Deposition Exhibit 31 was marked</p> <p>10 for identification.)</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. And this is an e-mail exchange with</p> <p>13 yourself, Lizannette Vélez, and Steven Scheid,</p> <p>14 correct?</p> <p>15 A. Scheid.</p> <p>16 Q. Scheid?</p> <p>17 A. Scheid.</p> <p>18 Q. And Steven Scheid is the author of</p> <p>19 the digital study we were just looking at?</p> <p>20 A. He was one of them, yes.</p> <p>21 Q. And if I direct your attention to</p> <p>22 your December 6, 2022 e-mail on the second</p>	<p style="text-align: right;">Page 324</p> <p>1 five years.</p> <p>2 So if we stick to the same schedule</p> <p>3 for 2030, assuming we are doing a paid</p> <p>4 communications effort in 2030, we would be</p> <p>5 seeking requirements in Year 5, 2025, again,</p> <p>6 five years before the actual census is done and</p> <p>7 before the ads run.</p> <p>8 We will reach out to him for the</p> <p>9 requirements, but we will have to be very clear</p> <p>10 in that the requirements he is asking for in</p> <p>11 2025 may not make sense in 2030. It may be --</p> <p>12 what's -- what's collected may be different in</p> <p>13 2030 than what he is -- because it may be a</p> <p>14 completely different way of doing things,</p> <p>15 different -- industry standards change based</p> <p>16 upon the type of media and how media is</p> <p>17 deployed on a regular basis.</p> <p>18 So this is managing expectations</p> <p>19 that we will absolutely reach out in a</p> <p>20 requirements gathering session, because we</p> <p>21 reach out across the bureau, but there is no</p> <p>22 guarantee that what he is asking for he will</p>
<p style="text-align: right;">Page 323</p> <p>1 page --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- you write that -- well, strike</p> <p>4 that.</p> <p>5 Mr. Scheid is asking if there is a</p> <p>6 way to include in the requirements contract</p> <p>7 specific data that you would want to receive in</p> <p>8 order to analyze it, correct?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. And your response to him is: "The</p> <p>13 limitation is we are asking for information</p> <p>14 five years before it is needed, and so much can</p> <p>15 change in that time frame."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. What did you mean by that?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 THE WITNESS: We conducted market</p> <p>21 research for the 2020 ICC in 2015. That's five</p> <p>22 years before the media runs. A lot changes in</p>	<p style="text-align: right;">Page 325</p> <p>1 get because things change.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. And with respect to digital</p> <p>4 advertising specifically, what have you</p> <p>5 observed in the course of your time at the</p> <p>6 census bureau in terms of the pace of change?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: Well, in 2000 we did</p> <p>9 not use any digital advertising. In 2010 we</p> <p>10 used a very small percentage of digital</p> <p>11 advertising. In 2020 we used a significantly</p> <p>12 more percentage of -- of the media buy for</p> <p>13 digital advertising.</p> <p>14 The way digital is evolving and,</p> <p>15 just based upon my observations, with print</p> <p>16 becoming more obsolete and moving to digital,</p> <p>17 with TV moving to more digital- and</p> <p>18 streaming-type deliveries, with radio moving</p> <p>19 more from -- more from terrestrial to digital</p> <p>20 or satellite, it would appear that the</p> <p>21 trajectory for the use of digital would be</p> <p>22 growing exponentially.</p>

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<p style="text-align: right;">Page 326</p> <p>1 But that is my opinion. It's not</p> <p>2 based on any real data that I can quote, and we</p> <p>3 will do market research when we're ready to</p> <p>4 start the process to determine. And part of</p> <p>5 that market research is reaching out to</p> <p>6 industry experts about the direction of -- of</p> <p>7 advertising and vehicles to use. We don't</p> <p>8 purport to know that ourselves. We always ask</p> <p>9 those questions.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And Lizannette writes as well on</p> <p>12 Page 1, and her second -- sorry. In her third</p> <p>13 paragraph, she writes: "Since digital planning</p> <p>14 analytics is something that is constantly</p> <p>15 changing and evolving, my suggestion is to have</p> <p>16 the staff from DSSD that will be working</p> <p>17 directly with 2030 ICC sit down with the CNMP</p> <p>18 analytics team."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you agree with Mr. Vélez that</p> <p>22 digital planning and analytics is something</p>	<p style="text-align: right;">Page 328</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Okay. And in your last paragraph,</p> <p>4 you write: "We may have the opportunity to</p> <p>5 conduct additional market research specifically</p> <p>6 around the characteristics of digital ads."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What kinds of market research around</p> <p>10 the characteristics of digital ads were you</p> <p>11 contemplating could possibly be performed?</p> <p>12 MS. ZWOLINSKI: Objection. Form.</p> <p>13 THE WITNESS: When we conduct market</p> <p>14 research, what we have done in the past is we</p> <p>15 formulate the questions that we are seeking</p> <p>16 answers to, and in addition to -- what is it?</p> <p>17 We post them because this is -- it's -- it's</p> <p>18 like an FRN. I can't remember what that stands</p> <p>19 for. Federal Register Notice.</p> <p>20 We -- we're not specific -- we don't</p> <p>21 pick and choose to whom we send the questions.</p> <p>22 We post the questions through a Federal</p>
<p style="text-align: right;">Page 327</p> <p>1 that is constantly changing and evolving?</p> <p>2 A. Absolutely.</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 THE WITNESS: Absolutely.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And I'm sorry. Flipping back to</p> <p>7 your e-mail in the third paragraph, you write:</p> <p>8 "We do not direct them in the solution because</p> <p>9 given the speed with which this industry</p> <p>10 changes, the contractor may be able to provide</p> <p>11 a better solution than that which we have</p> <p>12 determined."</p> <p>13 What industry are you referring to</p> <p>14 here?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: The advertising</p> <p>17 industry.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. Okay. And are you referring to</p> <p>20 anything more specifically than the advertising</p> <p>21 industry?</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p>	<p style="text-align: right;">Page 329</p> <p>1 Register Notice and ask industry to respond.</p> <p>2 What I was saying there is we have in the past</p> <p>3 done pretty generic around what do you think is</p> <p>4 the best structure for the contract, do you</p> <p>5 think this is something that can be done by a</p> <p>6 small business as the prime, things like that,</p> <p>7 where do you see advertising, what new trends</p> <p>8 are available.</p> <p>9 We could actually do one</p> <p>10 specifically around digital media focusing on</p> <p>11 what DSSD is interested in learning and</p> <p>12 formulate questions around what kind of data</p> <p>13 are available to help assist in understanding</p> <p>14 X, Y, and Z.</p> <p>15 And then we take that information,</p> <p>16 and we include it, one, in our market research</p> <p>17 report but also as -- we take parts of that to</p> <p>18 help write the requirements for the master</p> <p>19 contract in a way that is not specific but</p> <p>20 provides the flexibility to -- that does not</p> <p>21 lock them into statistics or formats -- types</p> <p>22 of data that are available in 2025 that may</p>

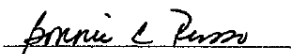
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<p style="text-align: right;">Page 330</p> <p>1 change in 2030.</p> <p>2 Does that --</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. That does make sense. Thank you.</p> <p>5 And so the market research report</p> <p>6 for the 2020 census, is it correct that that</p> <p>7 was facilitated through a Federal Register</p> <p>8 Notice and industry participants responding?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 THE WITNESS: I believe so.</p> <p>11 MS. GOODMAN: Okay. Let's take a</p> <p>12 break.</p> <p>13 THE VIDEOGRAPHER: Going off the</p> <p>14 record. The time is 18:04.</p> <p>15 (A short recess was taken.)</p> <p>16 THE VIDEOGRAPHER: Going back on the</p> <p>17 record. The time is 18:19.</p> <p>18 (Deposition Exhibit 32 was marked</p> <p>19 for identification.)</p> <p>20 MS. GOODMAN: Ms. Oliphant, I am</p> <p>21 handing you Exhibit 32, CENSUS-ADS-75450</p> <p>22 through 75493.</p>	<p style="text-align: right;">Page 332</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. All right. Setting that document</p> <p>3 aside, I want to circle back to just ask you</p> <p>4 one more question with respect to your</p> <p>5 participation in this lawsuit, sort of just to</p> <p>6 reorient you to that portion of the day during</p> <p>7 your deposition. Okay.</p> <p>8 And my question to you is whether --</p> <p>9 did you ever seek legal advice from an attorney</p> <p>10 at the antitrust division in and around January</p> <p>11 of 2023?</p> <p>12 MS. ZWOLINSKI: Objection. Form.</p> <p>13 THE WITNESS: Can you be more</p> <p>14 specific.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. I can try.</p> <p>17 Have you ever sought the counsel --</p> <p>18 or sought legal advice from an attorney at the</p> <p>19 antitrust division of the Department of</p> <p>20 Justice?</p> <p>21 MS. ZWOLINSKI: Objection. Form.</p> <p>22 THE WITNESS: No.</p>
<p style="text-align: right;">Page 331</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. And do you recognize this document</p> <p>3 as the final Order 15 contract?</p> <p>4 And I can direct your attention the</p> <p>5 page ending in Bates 52 at the top.</p> <p>6 A. I think this -- I believe this was</p> <p>7 the original. There have been multiple</p> <p>8 modification since then, so I wouldn't say this</p> <p>9 is the final because the final would include</p> <p>10 all the modifications.</p> <p>11 Q. Okay. At least this version of</p> <p>12 the -- or this original contract did not fix</p> <p>13 the price for any particular media buy; is that</p> <p>14 correct?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: No media buys were</p> <p>17 only fixed price. Only labor.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And it didn't fix the quantity of</p> <p>20 media to be purchased, correct?</p> <p>21 A. No, it did not.</p> <p>22 MS. ZWOLINSKI: Objection.</p>	<p style="text-align: right;">Page 333</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. Okay. And if you need to seek legal</p> <p>3 advice in the course of your work, to whom do</p> <p>4 you turn?</p> <p>5 MS. ZWOLINSKI: Objection. Form.</p> <p>6 THE WITNESS: Department of</p> <p>7 Commerce.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. And has the antitrust division</p> <p>10 provided you any legal advice in the course of</p> <p>11 your participation in this lawsuit?</p> <p>12 MS. ZWOLINSKI: Objection. Form.</p> <p>13 And --</p> <p>14 THE WITNESS: How do you define --</p> <p>15 MS. ZWOLINSKI: You can answer.</p> <p>16 THE WITNESS: How do you define</p> <p>17 "legal advice"?</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. If you have a -- if there is a legal</p> <p>20 issue that you are confronting in the course of</p> <p>21 your work or need counsel on or you have a</p> <p>22 legal question, has the antitrust division</p>

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<p>1 provided you legal advice?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And is your answer the same</p> <p>6 in January of 2023?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay. And in the course of your</p> <p>11 participation in this lawsuit if you've had</p> <p>12 questions about your participation in this</p> <p>13 lawsuit, have you turned to the attorneys at</p> <p>14 the antitrust division with your questions?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. To whom have you turned, if anyone?</p> <p>19 A. Commerce.</p> <p>20 Q. And is that Mr. Cannon?</p> <p>21 A. That's Mr. Cannon, yes.</p> <p>22 Q. Do you consider the lawyers for the</p>	<p>1 MS. GOODMAN: I have no further</p> <p>2 questions. I'll pass the witness.</p> <p>3 MS. ZWOLINSKI: We have no</p> <p>4 questions.</p> <p>5 MS. GOODMAN: Okay. Thank you so</p> <p>6 much for your time, Ms. Oliphant. I very much</p> <p>7 appreciate it.</p> <p>8 THE WITNESS: You're welcome. Thank</p> <p>9 you.</p> <p>10 THE VIDEOGRAPHER: Off the record.</p> <p>11 MS. GOODMAN: Yes.</p> <p>12 THE VIDEOGRAPHER: This marks the</p> <p>13 end of the deposition of Kendall Oliphant. We</p> <p>14 are going off the record at 18:24.</p> <p>15 (Whereupon, the proceeding was</p> <p>16 concluded at 6:24 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 antitrust division to be lawyers for the census</p> <p>2 bureau?</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: I do not.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Why not?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 Foundation.</p> <p>10 THE WITNESS: Since census has their</p> <p>11 own lawyers and we have commerce lawyers, and I</p> <p>12 believe the commerce lawyers would be more --</p> <p>13 more sort of categorized in that way versus</p> <p>14 DOJ.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Okay. And is your answer the same</p> <p>17 with respect to your participation in this</p> <p>18 lawsuit as a representative of the census</p> <p>19 bureau?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 Foundation.</p> <p>22 THE WITNESS: Yes.</p>	<p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Bonnie L. Russo, the officer before</p> <p>3 whom the foregoing deposition was taken, do</p> <p>4 hereby certify that the witness whose testimony</p> <p>5 appears in the foregoing deposition was duly</p> <p>6 sworn by me; that the testimony of said witness</p> <p>7 was taken by me in shorthand and thereafter</p> <p>8 reduced to computerized transcription under my</p> <p>9 direction; that said deposition is a true</p> <p>10 record of the testimony given by said witness;</p> <p>11 that I am neither counsel for, related to, nor</p> <p>12 employed by any of the parties to the action in</p> <p>13 which this deposition was taken; and further,</p> <p>14 that I am not a relative or employee of any</p> <p>15 attorney or counsel employed by the parties</p> <p>16 hereto, nor financially or otherwise interested</p> <p>17 in the outcome of the action.</p> <p>18</p> <p>19 </p> <p>20 Notary Public in and for</p> <p>21 the District of Columbia</p> <p>22 My Commission expires: August 14, 2025</p>

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<p style="text-align: right;">Page 338</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, KENDALL OLIPHANT, do hereby certify that</p> <p>3 I have read the foregoing transcript of my</p> <p>4 testimony taken on 8/9/23, and further certify</p> <p>5 that it is a true and accurate record of my</p> <p>6 testimony (with the exception of the</p> <p>7 corrections listed below):</p> <table border="1"> <thead> <tr> <th>8 Page</th> <th>Line</th> <th>Correction</th> </tr> </thead> <tbody> <tr><td>9</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> </tbody> </table> <p>18 _____</p> <p>19 KENDALL OLIPHANT</p> <p>20 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>21 THIS ____ DAY OF _____, 2023.</p> <p>22 _____ (NOTARY PUBLIC) MY COMMISSION EXPIRES: Job No. CS6031956</p>	8 Page	Line	Correction	9	_____	_____	10	_____	_____	11	_____	_____	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	
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<p style="text-align: right;">Page 339</p> <p>1 Rachel Zwolinski, Esq.</p> <p>2 rachel.zwolinski@usdoj.gov</p> <p>3 August 10, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/9/2023, Kendall Oliphant (#6031956)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>																															

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